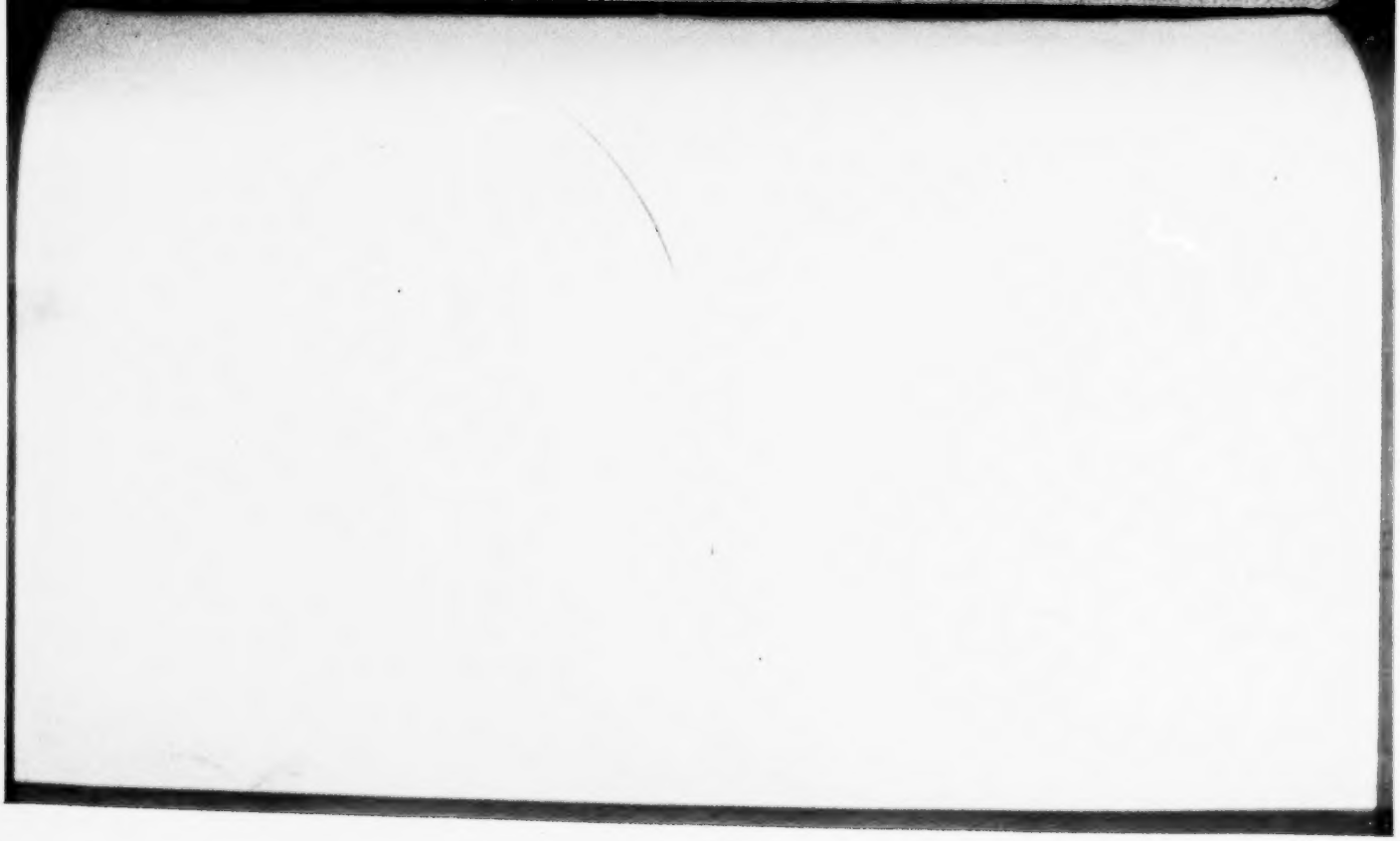

Petition for Certiorari

Office Supreme Court U. S.
FILED
OCT 18 1899
JAMES H. McKENNEY
Clerk

Filed Oct. 18th 1899.

Supreme Court of the United States.

#617

No. 426 OCTOBER TERM, 1899.

THE CARNEGIE STEEL COMPANY, LIMITED, Petitioner,

AGAINST

THE CAMBRIA IRON COMPANY, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

THOMAS B. REED,
PHILANDER C. KNOX,
of Counsel for Petitioner.

SMITH BROS., FRANKLIN PRINT, 429 GRANT ST., PITTSBURG.

IN THE

Supreme Court of the United States.

No. 427 OCTOBER TERM, 1899.

THE CARNEGIE STEEL COMPANY, Limited,
Petitioner,

AGAINST

THE CAMBRIA IRON COMPANY, Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

To the Honorable, the Judges of the Supreme Court of the United States:

Your petitioner, The Carnegie Steel Company, Limited, respectfully shows:

That on the 2d day of December, 1895, the complainant, The Carnegie Steel Company, Limited, brought its complaint against the respondent, the Cambria Iron Company, for infringement of a United States Patent No. 404,414, and granted to William R. Jones, June 4, 1889, (of which petitioner is assignee), for a method of mixing molten pig metal in such a way as would complete the continuous process of making Bessemer steel in direct connection with the blast furnace. The case was heard before the Circuit Court, and on the 5th of September, 1898, the opinion of the Court

was filed, fully discussing all the points of the case and holding for the complainant on all the points at issue.
The Circuit Court found affirmatively:

(*a*) This process was patentable.

(*b*) It was not anticipated by the prior efforts to the same end.

(*c*) It was of vast utility and public importance, as it quickened and cheapened the production of steel.

(*d*) That defendant used the process and therefore infringed.

The case then went to the Circuit Court of Appeals and on the 21st of August, 1899, the Court filed its opinion and ordered the decree of the Circuit Court reversed and the case remanded to that Court with direction to dismiss the bill of complaint.

The Circuit Court of Appeals decided that the respondent did not infringe. And while the Court did not directly traverse the first three findings of the Court below, it so modified them as to leave very uncertain the results of a long and expensive litigation which results concern large interests and many people.

In order that this honorable Court may understand the grounds on which this petition for a *certiorari* is based, the following statement of facts, condensed from the opinion of the Circuit Court, is submitted.

Since 1856, when Bessemer gave the world his method of converting molten pig metal into steel by air blasts, the genius of the art, following his suggestion as to its desirability and economy, diligently sought a method of using the

molten metal directly as it came from the furnaces without the loss of its heat and without the necessity of re-handling.

While every body saw the desirability of such a method and many practical attempts were made to reach the result; they all failed, until Jones invented the process which is the subject of this proceeding.

Prior to this invention of Jones and its practical employment at the Edgar Thomson Steel Works, the respondent, as well as others, used the intermediate cupola process, which necessitated casting the molten metal, as it came from the furnace, into pigs, which, after cooling, were assorted, broken up, re-melted in a cupola furnace, and thence conveyed to the converter to be made into steel by the Bessemer process. Jones eliminated the whole intermediate cupola process by inventing a method of mixing the metal while passing through a receptacle called a mixer throughout the case, as it came in molten condition from the blast furnaces, so that it could be directly conveyed, still molten, to the converters. This made practical the direct process, and accomplished the great end sought in the art.

The reason molten pig metal could not be used directly from the furnace without mixing by the Jones process, or without going through the circuitous, tardy and expensive cupola process is this:

Molten pig metal, in the percentage of its non-metallic constituents (silicon, carbon, &c.,) varies greatly. This variation appears not alone as between different furnaces, but is quite as marked as between successive withdrawals from the same furnace. As the air blast in the converter must be regulated to correspond with the quantity of silicon, carbon, &c., contained in the charge (these being the ele-

ments operated upon by the blast to effect the purification of the metal which is the heart of the Bessemer invention) and as there is no way of discovering the extent of their presence, except by the eye while the operation is in progress, notwithstanding all the skill obtainable, great quantities of steel are lost, and much inferior steel is made by the wide fluctuations. Jones' process obviates this trouble by filling a receptacle (the mixer) almost full of molten metal drawn from different furnaces, or from the same furnace at different times, which are not uniform in their chemical composition, thus creating a composite body of metal. From this composite body of metal are taken portions for use in the converter which represent the average of the ununiformity of all the parts, and as withdrawals are made, fresh portions are added successively so that at all times the receptacle contains a pool which dominates or controls the parts as stated.

Uniformity has been the aim of most other processes, but the Jones process was based upon the idea that uniformity was not essential, but that a non-abrupt non-uniformity, which was the outcome of the Jones process, produced the whole result desired. This theory was reduced to practice by Captain Jones. After that, everybody, as is usual in such cases, began to discover that they had always known it.

Your petitioner exhibits, as part of the application, a certified copy of the Record, of the decree of reversal, and the opinions of the said Circuit Court and of the Court of Appeals.

Upon this statement of facts and the Record in the cause, the petitioner submits the following reasons why the judgment of the Circuit Court of Appeals, reversing the de-

cree of the Circuit Court, and remanding the cause to that Court with directions to dismiss the petitioner's bill, should be brought here for review by this Court:

First. Because of the great importance of the case to the public and the parties.

It is of the same range and importance as Bessemer's original invention and as Mushet's re-carbonization process, and completes the series necessary for the cheap production of steel.

There should be a speedy and certain decision upon the vital questions involved in this case. The patent covering a radical process in the art of steel making as it is now practiced throughout the civilized world, should be definitely adjudicated upon the question of its validity, without compelling the complainant to renew, with respect to some other defendant, the litigation that has consumed so many years, and, as the voluminous record discloses, was so thoroughly and exhaustively tried. The decision of the Circuit Court of Appeals being definite only upon the question of infringement, and being predicated as it is upon a misconception of the binding effect of an alleged stipulation, on the question of infringement, has only determined that one fact in respect to this one defendant, reference to the other questions, insofar as they are referred to in the opinion, not being followed out to any logical and decisive conclusion.

Second. Because the Circuit Court of Appeals erred in the interpretation of the second claim of the patent in this, that the said Court decided there was nothing in the patent to warrant the determination that the inventor had in mind that the residue to be left in the receptacle

should form a dominating pool, while the proceedings in the Patent Office, cited by the Court, and the patent itself, assert the contrary thereof.

Third. Because the Circuit Court of Appeals found that defendant did not infringe the second claim of the patent in suit.

Fourth. Because the Circuit Court of Appeals erred in reaching its conclusion as to infringement in considering, and in considering alone, the effect of an alleged stipulation in the case respecting defendant's use of petitioner's process, which stipulation had been repudiated for mistake before the closing of the case, and had been waived as to its essential features by both parties to the case.

Fifth. Because the Circuit Court of Appeals failed to follow or to give force or effect to the rulings and decisions of this Court on the legal propositions involved.

Sixth. Because, under the circumstances heretofore stated, a full consideration of the case by this honorable Court will tend to prevent costly and undesirable litigation, and promote justice to all interested.

Wherefore, in view of the premises, petitioner prays that this honorable Court will grant its writ of *certiorari* directed to the Circuit Court of Appeals for the Third Circuit, requiring that the record of said cause in the said Court and its decree of reversal thereof, be certified to this Court, and that this honorable Court will thereupon proceed to correct the errors complained of, reverse the said decree and remand the said cause, and give to your pe-

titioner such other and further relief as the nature of the case may require and to the Court may seem proper in the premises.

THE CARNEGIE STEEL CO. LIMITED,
JAMES GAYLEY, *Manager.*

THOMAS B. REED,
PHILANDER C. KNOX,
of Counsel.

State of Pennsylvania, }
County of Allegheny, } *ss.*

Before the undersigned, a Notary Public, personally comes **James Gayley, Manager of The Carnegie Steel Company, Limited,** petitioner, who, being duly sworn, deposes and says that the matters stated in the foregoing petition for *certiorari* are true as therein set forth to the best of his knowledge, information and belief.

JAMES GAYLEY.

Sworn to and subscribed before me, this 17th day of October, 1899.

GEO. B. MOTHERAL.

[N. P. SEAL.] *Notary Public.*